In the words of Lord Lane C.J., in the circumstances of this case, and in particular the background of the appellant's character and his contribution to society and the country, this is a case par excellence where a short term of imprisonment is adequate punishment.

In my opinion, in this case, a term of imprisonment of three months would be adequate in all the circumstances. I therefore set aside the sentence of nine months imposed by the learned magistrate and substitute therefor a term of three months. To that extent I allow the appeal.

Appeal allowed.

Solicitors: *Robert W.H. Wang & Woo.*

PROBO PACIFIC LEASING PTE. LTD. v. LIM POH WENG & ANOR.

[O.C.J. (Wee Chong Jin C.J.) 24 March 1988]

[Singapore – Originating Summons No. 38 of 1987]

Land Law – Mortgaged property – Order for possession – Application for – Mortgage of property bought with CPF moneys – Property mortgaged without approval of CPF Board – Whether a valid mortgage – Whether mortgaged property is subject to CPF Board's interest – Central Provident Fund Act (Cap. 36, 1985 Ed.), s. 19(1) & (5) – Land Titles Act (Cap. 157, 1985 Ed.), s. 69.

Provident Fund – Property bought with CPF money – Mortgage without approval of CPF Board – Whether valid – Central Provident Fund Act (Cap. 36, 1985 Ed.), s. 19(1) & (5).

The defendants' leasehold property was mortgaged to the plaintiffs. The plaintiffs sought delivery of possession of the mortgaged property under Order 83 of the Rules of the Supreme Court 1970.

The defendants raised two objections to the plaintiffs' application: (a) the mortgage was invalid on the ground that the property had been mortgaged without the prior approval of the CPF Board and thus in breach of clause 7(a) of the "Conditions For the Use of CPF Money to Purchase Mindef Flats"; (b) even if the mortgage is valid, the plaintiffs' interest is subject to an earlier charge over the property in favour of the CPF Board.

Held, allowing the plaintiffs' application: (1) clause 7(a) is purely contractual in character between the CPF Board and the defendants. The plaintiffs were not a party to this agreement and cannot be bound by its terms or effects. The defendants' breach of clause 7(a) merely renders them accountable to the CPF Board but does not alter or affect any substantive rights which third parties have acquired in breach of this provision;

(2) the defendants' second argument has no merits. On the facts, the question of priorities posed by the defendants does not arise as no charge or caveat had been lodged by the CPF Board;

(3) the plaintiffs' interest, which had been duly registered, must prevail under the ordinary principles of registration in the Land Titles Act (Cap. 157, 1985 Ed.). The plaintiffs were thus entitled to possession of the mortgaged premises.

ORIGINATING SUMMONS.

Joyce Tan Sok Kheng (Miss) for the plaintiffs.

Toh Peng Ann for the defendants.

Cur. Adv. Vult.

Wee Chong Jin C.J.: By a mortgage dated 26 January 1985 made between the defendants (mortgagors) and the plaintiffs (mortgagees), the defendants' leasehold property was charged to secure repayment to the plaintiffs of moneys owing from one Sandcom Managing Agents Pte. Ltd. under a hire purchase agreement dated 24 January 1985, up to a sum not exceeding $300,000. In Suit No. 10488 of 1985, the plaintiffs obtained judgment against Sandcom for $301,966.65 with interest and costs, being moneys due under the hire purchase agreement. That judgment was unsatisfied and the plaintiffs are now looking to the defendants for payment pursuant to the mortgage. Despite demands, the defendants have not paid and the plaintiffs now seek delivery of possession of the mortgaged property under Order 83 of the Rules of Supreme Court 1970.

To succeed in their application, the plaintiffs are required by section 69 of the Land Titles Act (Cap. 157, 1985 Ed.) to establish a right to possession. On the facts, the defendants have defaulted in making payment of the sums secured by the mortgage. The one month's notice to pay was duly given by the plaintiffs but not complied with. As such, the provisions of section 69 of the Land Titles Act (Cap. 157, 1985 Ed.) appear to have been satisfied in this case. However, the defendants have raised two objections to the plaintiffs' application.

Firstly, the defendants are impugning the validity of the mortgage on the grounds that they had mortgaged the property to the plaintiffs without the prior approval of the Central Provident Fund Board (CPF Board). They say that this approval is required by certain conditions regulating use of CPF funds for purchase of Ministry of Defence (Mindef) flats.

The defendants rest their first ground on the fact that the acquisition of the property in question, a Mindef-owned property, was partially

financed by their CPF contributions. They rely on clause 7(a) of the "Conditions For The Use of CPF Money To Purchase Mindef Flats" which the CPF Board imposes on persons who use their CPF moneys in the purchase of Mindef flats. Clause 7(a) provides:

"A purchaser who uses any part of his credit in the CPF for the purchase of the flat, whether in respect of lump sum payment or monthly instalment, shall not during the term of the lease, transfer, assign, *mortgage* or charge the flat or any interest in the flat, underlet, transfer or part with possession of the flat without the prior written approval of Mindef, which approval shall not be granted until adequate arrangements have been made to the satisfaction of the CPF Board for the restoration of the purchaser's account in the CPF together with interest lost." (emphasis added)

The defendants maintain that the mortgage was made in breach of clause 7(a) and that the mortgage is therefore bad and illegal. I am unable to accept such a proposition. It is to be observed that clause 7(a) is purely contractual in character as between the CPF Board and the defendants. The plaintiffs were not a party to this agreement and cannot be bound by its terms or effects. The defendants' breach of clause 7(a) merely renders them accountable to the CPF Board but does not alter or affect any substantive rights which third parties have acquired in breach of this provision.

The defendants' second ground turns on the question of priorities. The defendants contend that even if the mortgage is valid, the plaintiffs' interest is subject to an earlier charge over the property in favour of the CPF Board. The defendants rely on section 19(1) of the Central Provident Fund Act (Cap. 36, 1985 Ed.).

Section 19(1) provides:

"Where in accordance with any regulations made under section 51, a member of the Fund has on or after 1 June 1981 withdrawn any money standing to his credit in the Fund for all or any of the following purposes:

(a) to make payment, either full or partial, towards the purchase of immovable property;

(b) to repay or to make periodic payments towards the repayment of any loan taken by the member to finance or re-finance the purchase of immovable property;

(c) to pay any costs, fees or other expenses incurred:

(i) for the purchase of immovable property;

(ii) for obtaining any loan to finance or re-finance such purchase; and

(iii) in connection with withdrawals of any money from the Fund,

there shall be a charge on the member's estate or interest in the immovable property to secure the repayment of the money withdrawn from the Fund including the interest that would have accrued thereto if the withdrawal had not been made; and where the immovable property is purchased or owned by the member as a co-purchaser, joint-tenant or tenant-in-common, as the case may be, with one or more persons, the charge shall with the prior written consent of all the co-purchasers or co-owners extend to all their respective estates or interests in the immovable property."

The defendants contend that section 19(1) of the CPF Act creates a charge on the property in favour of the CPF Board and that this charge must necessarily prevail over the mortgage since the withdrawals from their CPF funds were made before the mortgage in question. On this basis, the defendants argue that an order for delivery of possession, if made, should be subject to the condition that the plaintiffs shall replace out of the sale proceeds the sums withdrawn from the defendants' CPF accounts.

I am of the opinion that the defendants' second argument has no merits. Section 19(1) of the CPF Act must be read with section 19(5). Section 19(5) provides:

"Any charge under subsection (1) shall be subject to all statutory rights and charges of any public authority over the immovable property and, in the absence of any agreement giving priority to the Board, to all encumbrances registered or notified prior to the date of acceptance by the Registrar of the instrument to register or notify the charge."

On the facts, the question of priorities posed by the defendants does not arise. No charge or caveat had been lodged by the CPF Board. There is also no evidence of any instrument of postponement or arrangement executed by the plaintiffs giving priority to the CPF Board. As such, the plaintiffs' interest, which had been duly registered, must prevail under the ordinary principles of registration in the Land Titles Act (Cap. 157, 1985 Ed.). In any event, as against the defendants-mortgagors the plaintiffs-mortgagees are entitled to possession of the mortgaged premises.

For these reasons, I granted an order-in-terms of prayers 1 and 3 of the plaintiffs' application.

Order accordingly.

Solicitors: *Tan Lee & Choo; Prakash Gurbani & Chong.*